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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. (C) No. 2344 of 2007

Petitioner : Birendra Kumar Dewangan

Versus

Respondents : State of Chhattisgarh and others

Post for order on 26th April, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 2344 of 2007

Petitioner		Birendra Kumar Dewangan S/o Shri Ganesh Ram Dewangan, aged about 22 years, Occupation Student of L.L.B. Part II, Govt. College Dhamatari (C.G.) Resident of Near Neharu School Tikrapara Ward, Dhamatari Dist. Dhamatari (C.G.)
	Versus	
Respondents	1.	State of Chhattisgarh through the Secretary Scheduled Tribe & Scheduled Cast Department D.K.S. Bhawan Mantralaya Raipur (C.G.)
	2.	The Collector Dhamatari, Dist. Dhamatari (C.G.)
	3.	Tahsildar Dhamatari District Dhamatari (C.G.)
	4.	Lala Ram Pawar S/o Late shri Bindu lal By Caste – Bya-Mahra, Working as Peon in the Municipal Office Dhamatari, Dist. Dhamatari (C.G.) Resident of Near Neharu School Tikrapara Ward Dhamatari Dist. Dhamatari (C.G.).
	5.	Rajesh Pawar S/o Shri Lala Ram Pawar,
	6.	Kumari Rajni D/o Shri Lala Ram Pawar,
	7.	Umesh Pawar S/o Shri Lal Ram Pawar
	8.	Udho Ram S/o Late Shri Bindu lal Pawar By Caste Baya.
	9.	Ku. Purnima Pawar D/o Shri Udho Ram
	10.	Ku. Poonam Pawar D/o Shri Udho Ram.
	11.	Ku. Soniya Pawar D/o Shri Udho Ram.
	12.	Ku. Chanda Pawar D/o Shri Udho Ram
	13.	Tameshwar Pawar S/o Shri Udho Ram
	14.	Dameshwar Pawar S/o Shri Udho Ram
	15.	Madan Pawar S/o late Shri Bindu lal Pawar By Caste Baya.
	16.	Ku. Savita Pawar D/o Shri Madan Pawar
	17.	Ku. Geetanjali Pawar D/o Shri Madan Pawar

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18. Nileshwar Pawar S/o Shri Madan Pawar.
19. Onkar Pawar S/o Shri Shivlal Pawar
20. Gopal Pawar S/o Shri Onkar *Pawar, Ashwani Pawar S/o Shri* Onkar Pawar,
Respondent No. 4 to 20 are by *Caste – Bya and Resident of Near* Neharu School Tikrapara Ward Dhamatari Dist. Dhamatari (C.G.)

WRIT PETITION UNDER ARTICLES 226 OF THE *COSTITUTION OF INDIA*

SB: Hon'ble Mr. Justice Satish K. Agnihotri

Shri R. S. Patel, Advocate for the petitioner.

Shri Utkarsh Verma, Deputy Govt. Advocate for the respondents No. 1 to 3.

ORDER

(Passed on this 26th day of April, 2007)

1. The petitioner challenges the legality and validity of the impugned order dated 28.7.2006 (Annexure P/1), issued by the Deputy Collector, for Collector, Dhamtari, addressed to the Officer on Special Duty, General Administration and Public Grievances Redressal Department, Government of Chhattisgarh.
2. The indisputable facts in nutshell are that the petitioner made a complaint to the Chief Minister vide letter dated 20.1.2006 (Annexure P/2) that the respondents No. 4 to 20 do not belong to Mahar community , as such they do not come under the category of Scheduled Tribe (S.T.). Their family is known as 'bya mahar' which is not a notified S.T. community. The General Administration Department vide letters dated 3.3.2006 and 3.5.2006 directed the Collector to enquire into the facts and submit a report. The Deputy Collector for Collector vide impugned letter dated 28.7.2006

submitted the report, accordingly, stating that the respondents No. 4 to 20 belong to Mahar community as the caste certificates were issued by the competent officer.

3. Shri R. S. Patel, learned counsel appearing for the petitioner submits that the report of the Collector is contrary to the provisions of law as the Collector/Deputy Collector is not competent to scrutinize the caste of a particular community as to whether the same is S.C. S.T. O.B.C. or not. The petitioner being immediate neighbour of the respondent No.4 and others, know the entire family and their ancestors. They belong to 'bya mahar' caste which falls in O.B.C. category. For deriving the benefit the respondents No.4 to 20 have obtained false certificates of S.T from the competent officer, thus the matter be examined by the State Level Caste Scrutiny Committee.

4. Shri Utkarsh Verma, learned Deputy Govt. Advocate appearing for the respondents/State, per contra, would submit that the Collector is competent to verify the genuineness of a caste certificate, issued by the competent authority and it is not necessary to get the same examined by the State Level Caste Scrutiny Committee. However, the petitioner should be granted liberty to approach the Committee, if so advised.

5. Having heard learned counsel for the parties and having perused the documents appended thereto, it is evident that the caste certificates issued to the respondents No. 4 to20 as S.C. was issued by the competent authority. This is also not the case of the petitioner that the caste certificates are false one. However, the case of the petitioner is that if there is any dispute with regard to a caste of a community, the same should be referred to the State Level Caste Scrutiny Committee. The Collector ought to have referred the

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matter to the Caste Scrutiny Committee before making a report to the Government that the caste certificates issued by the competent authority were correct.

6. In the matter of **Kumari Madhuri Patil and another v. Addl. Commissioner, Tribal Development and others** (AIR 1995 SC 94), the Hon'ble Supreme Court has held that the dispute with regard to the caste of S.C./S.T./O.B.C. should be decided by the State Level Caste Scrutiny Committee. Thereafter, subsequently, the Hon'ble Supreme Court in the case of **State of Maharashtra & ors. V. Ravi Prakash Babulalsing Parmar & Anr.** (2006 AIR SCW 6093), has observed that only because a claim is made by a person that he belongs to a member of a tribe notified to be Scheduled Tribe in terms of the provisions of the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, no immunity in absolute terms can be claimed. The makers of the Constitution laid emphasis on equality amongst citizens. Constitution of India provides for protective discrimination and reservation so asto enable the disadvantaged group to come on the same platform as that of the forward community. If and when a person takes an undue advantage of the said beneficent provision of the Constitution by obtaining the benefits of reservation and other benefits provided under the Presidential Order although he is not entitled thereto, he not only plays a fraud on the society but in effect and substance plays a fraud on the Constitution. The Caste Scrutiny Committee can go into the question as to whether a caste certificate has rightly been issued or not. The authorities concerned were also found to have some role to play in finding out the correctness or otherwise of the claim for issue of a caste certificate.

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7. In view of the well settled dicta laid down (supra) by the Hon'ble Supreme Court, it is desirable that the matter should be referred to the Caste Scrutiny Committee to examine the complaint of the petitioner, after recording the evidence and examining other relevant documents and to pass appropriate order, in accordance with law.
8. As a result, the impugned order dated 28.7.2006 (Annexure P/1), issued by the Deputy Collector, for Collector, Dhamtari, should not be given effect to and the matter be referred to the Caste Scrutiny Committee for consideration of the complaint of the petitioner, afresh, in accordance with law.
9. This petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur